IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION NO : 29557 of 1995

Between:

Talluri Gopalam, S/o Subbarayudu,
R/o. Andalur, Veeravasaram Mandal,
West Godavari District.

..... PETITIONER

AND

1 Chavvakula Suryaprakasa Rao, S/o Lingayya (Died)
R/o Tholeru, Veeravasaram Mandal,
West Godavari District.
2 Posimetti Chiranjeevi Rao, S/o. Venkataramaih,
R/o Yelamanchili Lanka, N.S.P. D.M.C.
West Godavari District.
3 Posimetti Seshavaram, W/o. Chiranjeevirao,
R/o Yelamanchili Lanka, West Godavari District.
4 Posimetti Krishna Rao, S/o. Chiranjeevi Rao,
R/o Yelamanchili Lanka, West Godavari District.
5 Posimetti Venkata Ramarao, S/o.Chiranjeevi Rao,
R/o Yelamanchili Lanka, West Godavari Dist.
6 The Special Officer-cum-Principal District Munsif,
Bhimavaram, West Godavari District.
7 The District Judge, West Godavari at Eluru.

8 Chavakula Radha Krishna Veni,
W/o. Chavakula Suryaprakasa Rao,

R/o. Tholeru, Veeravasaram Mandal, West Godavari District.

(R.8 brought on record as L.R of deceased R.1 as per Court
order dt. 02.03.1998 in W.P.M.P.No.25199 of 1197)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of CERTIORARI calling for the records relating to the orders passed by the 7th respondent District Judge, West Godavari, Eluru, in A.T.A.No.29/87 dated 27-9-1995 confirming the orders of the 6th respondent in A.T.C.No.28/82 dated 25-2-1987 and quash the same and direct the respondents to execute the Sale Deed in favour of the petitioner in respect of Ac.1.78 cents covered by S.No.278/2 of Tholeru village, Veeravasaram Mandal, West Godavari District under the provisions of Section 15 of Act 39 of 1974.

Counsel for the Petitioner: MR.G.KRISHNA MURTHY

Counsel for the Respondent No. 8: Mr. T.S. Anand.

Counsel for the Respondent Nos. 6 and 7: GP FOR REVENUE

The Court made the following ORDER:

ORDER:

This writ petition is filed by the petitioner aggrieved by the order passed by the Appellate Authority, under the provisions of the A.P. Tenancy Act, 1956 (for short 'the Act'), not only seeking to quash the said order as illegal and arbitrary and also seeking consequential relief directing the respondents to execute the sale deed in his favour in respect of Ac.1.78 cents in Survey No.278/2 of Tholeru Village, Veeravasaram Mandal, West Godavari District, in terms of the provisions of Section 15 of the Act 39 of 1974.

The facts in brief are, that the petitioner is claiming to be a tenant in respect of the

above scheduled extent of land from respondents 2 to 5 since 1971. As the petitioner apprehends interference, apart from the execution of an agreement of sale by respondents 2 to 5 in favour of the first respondent dated 29.09.1973, filed O.S.No.388 of 1974 on the file of the

First Additional District Munsif, Bhimavaram, seeking injunction against respondents 1 to 5. Similarly, respondents 2 to 5 filed O.S.No.1037 of 1974 for recovery of sum of Rs.1,773.33 ps. as arrears. The trial Court, after full trial, dismissed the suit filed by the petitioner, while at the same time decreed the suit filed by respondents 2 to 5. In the meanwhile, the first respondent, in whose favour an agreement of sale was executed by respondents 2 to 5 filed O.S.No.70 of 1976 seeking specific performance of agreement of sale. The said suit was decreed on 29.03.1979 in his favour. Thereafter, first respondent filed E.P.No.5 of 1981 seeking execution of decree for executing the registered sale deed as well as delivery of possession of the suit schedule property. It appears that the petitioner also preferred Appeal against the dismissal of his suit in O.S.No.388 of 1974 and also the decree passed in O.S.No.1037 of 1974 and both the appeals are numbered as A.S.No.112 of 1980 and A.S.No.114 of 1980. But, however, in the appeal filed against O.S.No.388 of 1974, the petitioner omitted to implead the first respondent. Later, both the appeals were allowed granting injunction in favour of the petitioner and against respondents 2 to 5. The finding recorded by the trial Court while dismissing O.S.No.388 of 1974 “the petitioner is a trespasser of the land” has became final. Insofar as the first respondent is concerned, as he was not impleaded as party respondent in the appeal filed against the decree of dismissal of suit, the decree has become final. In E.P., filed by the first respondent, an order was passed for executing the sale deed as well as for delivery of possession. In the said E.P., the petitioner was impleaded as one of the party respondents i.e., respondent No.5, where the petitioner has raised all the objections that are available and which are raised in the present proceedings including the claim of the perpetual tenancy and also preferential rights provided under the provisions of the amended Act. All the objections raised by the petitioner were overruled and orders were passed in the E.P. directing the judgment debtors to execute the sale deed as well as to effect delivery of possession of the property to the first respondent. The petitioner, while contesting the said proceedings, simultaneously filed A.T.C.No.28 of 1982, on the file of the Tenancy Court, Bhimavaram, and sought relief of injunction restraining the respondents from getting any collused sale deed in favour of the first respondent and also a further

direction to respondents 2 to 5 for executing the sale deed in favour of the petitioner in respect of the scheduled property after receiving lawful price fixed by the Court and also for permanent injunction restraining the respondents from interfering with the possession of the petitioner. The Tenancy Court elaborately considered the contentions and rejected the claim while dismissing the Tenancy Application filed by the petitioner. Aggrieved by that, the petitioner filed A.T.A.No.29 of 1987 before the District Court, which also ended with the similar fate. Hence, the present writ petition.

The petitioner, while pursuing the proceedings before the Tenancy Authorities, filed revision against the order passed in E.P.No.5 of 1981. The revision was dismissed upholding the orders of the Executing Court. Even against the order of delivery of possession, which was effected in the year 1991, the petitioner filed revision before this Court and was not successful and therefore those proceedings have became final. The petitioner did not pursue the matter further but has come up with the present writ petition against the order of appellate authority under the provisions of the Act.

The learned counsel for the petitioner contended that after the amended provisions of the Act, came into operation, the tenant became a perpetual tenant under Section 10 of the Act and further under Section 15 of the Act, the tenant has got a preemptive right to purchase the property, if the landlord intend to sell the property contrary to the above provisions, the sale is illegal and without jurisdiction. Apart from that the learned counsel for the petitioner also contended that Section 17 of the Act has overriding effect against all proceedings including agreements, decrees etc. In the light of the said overriding provision, even the decree and order obtained by the first respondent are not enforceable and binding on the petitioner. Therefore, the petitioner is entitled not only for protection of his possession in respect of the scheduled property but also entitled to purchase the property by way of preemptive right provided under Section 15 of the Act. Hence, he sought for appropriate orders.

On the other hand, the learned counsel appearing for the first respondent, Sri T.S.Anand, supported the order. The learned counsel contended that admittedly an agreement was executed in the year 1973, when there was absolutely no prohibition or no restriction on the rights of the respondents 2 to 5. Pursuant to the said agreement, as the respondents 2 to 5 did not come forward to comply with the terms of the agreement, first respondent was compelled to file a civil suit, to get a decree

for specific performance of the agreement of sale as well as to get possession of the property, and the said suit O.S.No.70 of 1976 was decreed on 29.03.1979. It is also his contention that pursuant to the said decree, the first respondent filed E.P.No.5 of 1981, wherein the petitioner contested the execution, though he remained *ex parte* in the suit that was filed by the first respondent. The learned counsel contested that before the Executing Court, the present petitioner raised all the grounds, which are raised now and all those grounds were considered elaborately and objections raised by the petitioner were rejected. In fact, the said order of the Executing Court was also assailed in the revision and the petitioner was not successful even in the revision. Therefore, it is not open for the petitioner again to approach the Tenancy Court, as if he did not suffer an order before the civil Court. He also contended that the overriding provisions of Section 17 of the Act has no application to the present facts of the case where the agreement as well as the decree passed are long prior to the date of Amendment Act. He also contended that all the objections, which are raised now, have already been raised and considered and rejected by the civil Court as well as by this Court. Therefore, it is not open to the petitioner to re-agitate those grounds.

Heard the learned counsel appearing for both sides and also considered the material available on record.

The facts as referred to above are not in dispute. However, the contention of the petitioner is that he is a tenant and by virtue of the amended provisions of the Act, which came into force from 01-07-1980, the petitioner is entitled for protection in respect of the agreement, as well as the decree that are in favour of the first respondent. In the normal course, his contention may be accepted as legal and valid but unfortunately, the petitioner raised all these objections before the Executing Court though he remained ex parte in the suit and suffered a decree. In fact, the petitioner field O.S.No.388 of 1974 seeking injunction against all the respondents 1 to 5 claiming to be a tenant but the trial Court while dismissing the suit recorded a finding that the petitioner is a trespasser. Though the petitioner filed an appeal in A.S.No.112 of 1980 against the judgment and decree, but the first respondent who was a party defendant in the suit, was not impleaded, as one of the respondents and therefore, the finding recorded by the trial Court that “the petitioner is a trespasser”

has become final. Apart from the above fact in the execution proceedings, the petitioner raised all the objections that are available under the amended provisions of the Act and all those objections raised by the petitioner were rejected and they have become final as the petitioner was unsuccessfully carried the matter in revision before this Court. He did not pursue the matter further. In the light of the above state of position, it is not open to the petitioner to reagitate the issue, which he had raised unsuccessfully before the civil Court earlier. Though the learned counsel relied upon a decision of the Division Bench of this Court in the case of **Pulikandam Subba Reddy and another v. Gorantal Veeraswmy and others** wherein the Division Bench had an occasion to consider the provisions of Sections 10(1) and 15 of the Act and held that if a tenant is in possession of the land, as on the date of the Act, came into force, he would get the benefits of the said provision, as a perpetual tenant and by virtue of Section 15(6) of the Act, he will be having a preferential right to purchase the property, if the landlord proposes to sell the land. But there is no dispute as to the abstract legal proposition laid down by the Division Bench of this Court. But unfortunately, here the petitioner raised all these objections before the Executing Court and suffered the orders and allowed those orders to become final.

Under the above circumstances, the petitioner is not entitled to get any relief in the present proceedings.

The writ petition is accordingly dismissed as devoid of merits. No costs.

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S. Ananda Reddy, J

Date: 03.12.2004

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To

1 The Special Officer-cum-Principal District Munsif,
Bhimavaram, West Godavari District.
2 The District Judge, West Godavari at Eluru.

3 Two CCs to G.P. for Revenue, High Court of A.P. Buildings,
Hyderabad (OUT)

4 Two CD Copies